



*Council of the*  
**INSPECTORS GENERAL**  
*on INTEGRITY and EFFICIENCY*



**Tony Ogden**  
GPO, Chair

**Peggy E. Gustafson**  
SBA, Vice Chair

**Hubert Bell**  
NRC

**Kathy Buller**  
Peace Corps

**Jack Callendar**  
PRC

**Elizabeth Coleman**  
FRB

**Martin Dickman**  
RRB

**J. Russell George**  
TIGTA

**Roy Lavik**  
CFTC

**Art Elkins**  
EPA

**Calvin Scovel III**  
DOT

**Adam Trzeciak**  
FMC

**Next Meeting:**  
**October 12,**  
**2010**  
**at 10 am, GPO**  
**Carl Hayden**  
**Room**

## **Proposed Amendment Would Modify Ombudsman Role in Whistleblower Protection Bill**

The Homeland Security and Government Affairs Committee (HSGAC) recently proposed an amendment to [S. 372](#), the Whistleblower Protection Enhancement Act, that would alter the scope of the bill's Ombudsman requirement. Section 120(a) of the bill as it is currently written requires IGs to designate a "Whistleblower Protection Ombudsman" to educate, advise, and advocate for agency employees who make disclosures that are protected under existing whistleblower laws. The proposed amendment would remove the advocacy role from section 120(a) but would retain the education and advisory roles. It would also change the term used in the IG Act to refer to the selection of AIGs from "appoint" to "designate"—the same term used in the bill to refer to the selection of the Ombudsman.

We have consistently opposed the Ombudsman provision since it was inserted into the bill by amendment in July 2009. On September 1, we sent a [letter](#) to HSGAC that echoes concerns we expressed to that committee in a letter we sent last November. The [November letter](#) was based on a survey we conducted of the IG community regarding the Ombudsman requirement. Our most recent letter reiterates CIGIE's position that requiring IGs to supervise someone acting as an advisor to agency employees with potential claims against the Agency would be in conflict with the IG mandate to operate independently and objectively. We also repeat that any Ombudsman should be placed outside of OIGs since the role is programmatic and thus more appropriate for agency management. Finally, we express concern that the proposed change in AIG selection terms could unnecessarily confuse an IG's existing power to "appoint" AIGs with the proposed power to "designate" an Ombudsman, at least to the extent that "designate" implies selecting a current OIG employee to assume additional responsibilities. We will continue to advocate for dropping the Ombudsman provision altogether as the bill moves forward.

## **Data Breach Notification Act Placed on Senate Calendar**

[S. 139](#), The Data Breach Notification Act, was reported out of the Senate Judiciary Committee on September 15 and placed on the Senate Legislative Calendar. The bill would require Federal agencies to notify individuals and certain law enforcement agencies of security breaches of personally identifiable information (PII). It would also supersede any other Federal or State laws concerning notification of PII security breaches, including a requirement in the Federal Information Security Management Act (FISMA) that agencies notify their respective IGs in the event of a "security incident".

In a survey we conducted on S. 139 in May 2009, 98% of the 48 IGs who responded believed that the legislation should clarify that Federal agencies must promptly notify their respective IGs in the event of a PII security breach. We subsequently sent a [letter](#) to the Judiciary Committee to communicate CIGIE's position and to propose additional language requiring IG notification for breaches of PII. The bill was nevertheless reported out of Judiciary without amendment.

Last November, all of S. 139's provisions were incorporated into a related bill, [S. 1490](#), The Personal Data Privacy and Security Act. Shortly thereafter, we wrote a [letter](#) to HSGAC regarding S. 1490 that closely mirrors our prior letter on S. 139. Like S. 139, S. 1490 is currently awaiting action in the full Senate. Neither bill had a House counterpart as of press time. We intend to take further action if we determine that either bill has a chance of passing during the current Congressional session.

## Senator Pryor Considers Bill to Require Disclosure of Tax Delinquent Employees to IGs

Senator Pryor's Office recently contacted us to request our comments on a draft bill concerning tax delinquent Federal employees. The bill would require limited disclosure of those employees' tax information to their respective IGs or to the person at their agencies responsible for taking disciplinary action. Based on feedback from our members, we recommended removing reference to IGs from the draft bill since IGs lack the authority to take disciplinary action against employees.

## Audit, Investigations, and Legislation Committees Form Working Group on Peer Review Reporting

As we reported in our last newsletter, IGs are now required to include their peer review results as an appendix to each semiannual report under section 989(c) of [P.L. 111-203](#), The Dodd-Frank Wall Street Reform Act. An effort is currently underway to assemble representatives from the Audit, Investigations, and Legislation Committees to develop peer review reporting guidelines designed to promote consistency in reporting across the IG community. Peg Gustafson, Small Business Administration IG, and Beth Coleman, Federal Reserve Board IG, will be participating in the working group on behalf of the Legislation Committee.

## Update on Inspector General Authority Improvement Act

On July 28, the Congressional Budget Office issued a [report](#) showing that any additional administrative costs or savings from implementing [H.R. 5815](#) would not be significant for the period 2011 – 2015. The report also showed that the legislation would not affect the budgets of state, local, or tribal governments.

On September 21, staff from Representative Mike Quigley (D-IL) contacted the Committee concerning a proposed amendment to H.R. 5815 regarding FISMA. The [amendment](#) would direct agency heads to ensure that OIGs have "prompt, unobstructed read-only access to all agency information systems to conduct investigations, audits, evaluations, or inspections" authorized under Section 6 of the IG Act. Because of time constraints, only a few Committee members were able to offer informal comments on this proposed amendment. Three members supported the amendment while two other members noted that IGs already have the authority to access agency electronic information and were unaware of any problems accessing this agency information. One member noted that the proposed amendment may entail costs to the agency to provide "read-only access" to all agency information systems and that more consideration needs to be given to the proposal before moving forward.

In other news, we were recently contacted by the House Oversight and Government Reform Committee (HOCR) regarding testimonial subpoena authority for IGs (TSA). We have informed Congressional staff that CIGIE's Executive Council has decided to postpone further pursuit of TSA until it can adequately assess implementation of a similar authority recently granted to DOD IG. Notwithstanding, HOCR has indicated continued support of TSA for IGs.

## Other Matters

There has been no further action on [H.R. 5548/S. 3480](#) (The Protecting Cyberspace as a National Asset Act); of [H.R. 4900/S. 921](#) (The Federal Information Security Amendments Act). We will continue monitoring and providing CIGIE with periodic updates.

*For more information about other IG-related legislation, please click [HERE](#).*